

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2480 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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KAJALBEN G SINDHI

Versus

COMMISSIONER OF POLICE

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Appearance:

MR AM PAREKH for Petitioner  
MS PUNANI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT  
Date of decision: 18/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective  
parties.

The petitioner challenges the order of preventive  
detention dated 10th January, 1999, made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order. Three offences punishable under Bombay Prohibition Act are registered against the petitioner, two of which are pending trial. In each of the said offences, the petitioner is found to be in possession of a large quantity of foreign liquor. Besides, two individuals have given statements in respect of the nefarious activities of the petitioner and its adverse effect on the public order. They have particularly referred to the incidents of 1st December 1998 and 20th December, 1998. In both the said incidents, the petitioner is alleged to have beaten the concerned witness in a public place and to have used a knife for issuing threat and to terrorise the innocent people gathered on the spot.

It is contended that in the grounds of detention all the three offences registered against the petitioner are shown to be pending investigation. However, a bare perusal of the next paragraph in the grounds of detention would reveal that in respect of CR No.5205/98 registered on 7th May, 1998 and CR No. 5229/98 registered on 17th May, 1998, the chargesheets have been filed in the court. The non-application of mind is thus manifest and the subjective satisfaction recorded by the Detaining Authority is, therefore, vitiated. It is also contended that the Detaining Authority has wrongly invoked the powers conferred upon him under section 9 (2) of the Act in withholding the names and other particulars of the witnesses without valid reason. It is submitted that such power can be invoked if the disclosure of the said fact is considered to be against the public interest. The Detaining Authority has not recorded his subjective satisfaction in this regard and, therefore, the non-disclosure of the names and other particulars of the witnesses shall vitiate the order of detention. In support of this contention, Mr. Parekh has relied upon the judgment in the matter of SALIMBHAI HASANBHAI SALEJI VS STATE OF GUJARAT & ORS ( 1997 {2} GLR, 1903).

Upon perusal of the grounds of detention, I find that the three offences relied upon by the Detaining Authority have been tabulated and in last of the columns, they are shown to be pending investigation. However,

while describing the said offences, the Detaining Authority has specifically dealt with the same, and in respect of the offences registered on 7th May, 1998 and 17th May, 1998, he has categorically referred to the chargesheets submitted in the court. I am, therefore, of the view that while recording the subjective satisfaction, the Detaining Authority was alive to the fact that in two of the offences, the chargesheets were submitted. The subjective satisfaction recorded by him does not suffer from the vice of non-application of mind as contended. In respect of the names and the other particulars of the witnesses, the Detaining Authority has stated that the witnesses had expressed their fear of the petitioner and had requested not to disclose their names and the other particulars. The Detaining Authority has personally verified the statements given by the witnesses and has also recorded his subjective satisfaction in respect of the genuineness of the fear expressed by the witnesses. In the counter affidavit also, the Detaining Authority has categorically stated that the fear expressed by the witnesses was found to be real and genuine. He has further stated that unless the said particulars were withheld, the witnesses would not have given statements against the petitioner and no information against the petitioner would have come-forth. In the matter of Salimbhai (Supra), the court, on fact, found that - "The Detaining Authority while referring to these witnesses have also not considered as to what for their identity was to be kept secret. Except mentioning the word "public interest" nothing has been shown as to why identity of witnesses has to be kept confidential for reasons of public interest". The court considering the previous judgments of the Supreme Court and of this court held that - "In the facts of the present case, only the reason for withholding such information is that it was considered to be against the public interest to reveal identity. He was given promise that his statement will be kept secret. Now, such assurance by any official or condition of secrecy put by witness can not be said to be germane on the question of public interest unless it is coupled with some factual basis or a rationale behind it.....If a witness claims his identity to be kept secret on the ground that his life is in danger in case his identity is disclosed or a person against whom he is making statement is dangerous or headstrong person or that the disclosure of his identity may be injurious to the national interest or may be prejudicial to the security of the nation , such considerations may establish the nexus with the public interest".

In the present case, as observed hereinabove, but

for the exercise of power under section 9 (2) of the Act, the witnesses were not willing to give statements against the petitioner since they had a reasonable apprehension of retaliation by the petitioner. In view of the observations made in the above referred judgment, such reasons should be considered to be valid for withholding the identity of the witnesses. I am, therefore, of the view that the Detaining Authority had a valid reason to withhold the names and other particulars of the witnesses from the petitioner. The powers conferred under section 9 (2) of the Act have properly been exercised. No other contention has been raised before me.

Petition is dismissed. Rule is discharged.

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JOSHI\*